IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15940 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AVALBEN JETHABHAI PARMAR

Versus

SECRETARY - DEPARTMENT OF PANCHAYAT AND RURAL HOUSING

Appearance:

1. Special Civil Application No. 15940 of 2003

MR TEJAS M BAROT for Petitioner No. 1

MR LB DABHI. ASST. GOVERNMENT PLEADER for Respondent No. 1,3

MR HS MUNSHAW for Respondent No. 2

HL PATEL ADVOCATES for Respondent No. 4-5

CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 19/03/2004

ORAL JUDGEMENT

The petitioner was elected as President of Banaskantha District Panchayat at the meeting, which had been convened on 25.8.2003. The petitioner has been aggrieved by the order dated 11.11.2003 passed by respondent No. 1, whereby the petitioner's election as the president has been quashed and set aside.

2. It has been submitted by learned advocate appearing for the petitioner that in pursuance of an application given by respondents Nos. 4 and 5, respondent No. 1 had initiated proceedings for deciding whether the election, which had taken place on 25.8.2003, was in accordance with the relevant rules and regulations. After hearing the vice-president of Banaskantha District Panchayat, and respondents Nos. 2, 4 and 5, respondent No. 1 has held that the election of the petitioner was not in accordance with the procedure prescribed under the law and, therefore, the election has been set aside.

3. The learned advocate for the petitioner has mainly submitted that the impugned order was passed without hearing the petitioner. It has been therefore submitted by him that the impugned order is violative of the principles of natural justice. According to him, the petitioner ought to have been heard by respondent No. 1 before taking the impugned decision because the petitioner was to be affected due to his final decision.

4. Learned AGP Shri Dabhi has submitted that the petitioner had not been joined as an opponent in the application, which was submitted before the Secretary, Panchayats, Rural Housing and Rural Development Department and, therefore, no notice had been given to the petitioner before the impugned order dated 11.11.2003 had been passed. He, however, could not dispute the fact that proceedings of the meeting, where the petitioner was elected as president, had been quashed and set aside by respondent No. 1 without hearing the petitioner.

5. Looking to the undisputed fact that the petitioner's election was set aside without hearing the petitioner, it cannot be said that the impugned order dated 11.11.2003 is just and proper. The said order is bad in law because it violates the principles of natural justice. If the election of the petitioner was to be set aside, respondent No. 1 ought to have given an opportunity to the petitioner to submit her case.

6. For the aforestated reasons, the impugned order dated 11.11.2003 is bad in law and, therefore, it is

quashed and set aside. The matter is remanded to respondent No. 1 so as to enable him to decide the application afresh after hearing the petitioner and other concerned parties.

7. It is clarified that only on the ground that the petitioner was not heard by respondent No. 1, the impugned order is quashed and set aside and the petition is allowed. It would be open to the concerned parties to raise all possible contentions, including the contention with regard to jurisdiction, before respondent No. 1 when the application is to be heard by respondent No. 1 again.

The petition stands disposed of as allowed. Rule is made absolute to the above extent with no order as to costs. Direct service is permitted.

(A.R. Dave, J.)

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